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Yet the decision in the recent Pennsylvania case in going back to the original purpose of the vicinage requirement, rather than applying the hard and fast rule of Blackstone's period, seems in accord with the policy of the Pennsylvania Supreme Court to construe liberally the trial by jury provision of its Constitution.²⁸ The cause of public justice is advanced, and the accused suffers no actual detriment in the trial of his case.

R. D.

CREDIT EXTENSION AS AN "UNFAIR PRACTICE" UNDER INTERSTATE COMMERCE ACT.—The growing power of administrative tribunals over the services and practices of public service corporations in their relations with the public and with each other, is well illustrated by the decisions growing out of the recent litigation between the Postal Telegraph-Cable Company and the Western Union Telegraph Company. The New York Court of Appeals has affirmed an order of the Public Service Commission requiring the Western Union Company to extend in intrastate business the same credit facilities to the Postal Company as it extends to other competing or non-competing customers.¹ As affecting interstate transactions, a similar ruling has been made by the Interstate Commerce Commission.² The decisions, based on statutes which did not specifically cover the question in issue, result in a striking down of the common law principle that credit extension by a common carrier or other public servant is a matter of grace, and as such does not form the basis for a charge of discrimination.³

In view of the statutory provisions involved, a statement of the practice complained of by the Postal Company is important. For more than thirty years prior to August 1, 1919, the Western Union had extended credit to the complainant company both on company messages and messages tendered for transmission for customers of the latter. In cases where the sender was a charge customer of both companies, the tolls would be charged directly against the sender; company messages and messages from customers of the Postal Company not on the charge list of the defendant company would be charged against the complainant, and monthly settlements would follow. When the Postal Company reduced its rates, the Western Union refused to extend credit except for company messages, though it continued to extend broader credit facilities to companies other than the Postal Company.

²⁸ *Comm. v. Balph*, 111 Pa. 365, 3 Atl. 220 (1885); *Dallas v. Kemble*, 215 Pa. 410; 64 Atl. 559 (1906).

¹ *People ex rel. Western Union Telegraph Co. v. Public Service Commission*, 129 N. E. 220 (N. Y. 1920).

² *Postal Telegraph-Cable Co. v. Western Union Telegraph Co.*, 59 I. C. C. 512 (1920).

³ 2 Wyman Public Service Corporations, Sec. 435.

The New York statute⁴ has sweeping provisions as to the service required of public servants, and the court was able to find that the practice of the Western Union Company violated the mandate as to "impartiality." Under somewhat similar statutes, other state courts have reached a like conclusion,⁵ while under statutes prohibiting the granting of "unjust advantages or privileges," a contrary result has been reached,⁶ the cases going far to uphold the right of the public servant to grant its credit as it sees fit.

It is the decision of the Interstate Commerce Commission, however, which raises an interesting problem under the Interstate Commerce Act.⁷ Two sections of the Act are of possible application in support of the ruling. Section 3 prohibits the subjection of "any person, firm or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Section 15 provides that "whenever the Commission shall be of the opinion that any practice is or will be unjust or unreasonable or unjustly discriminatory," the Commission may prescribe what practice is to be thereafter followed.

A decided majority of the lower Federal courts have held that partiality as to credit extensions either to carrier or shipper is not prohibited by Section 3 of the Act,⁸ irrespective of the motive underlying the action.⁹ An early Federal decision held otherwise¹⁰ and one court in construing the prohibition as to "discriminations" in the Elkins Act¹¹ ruled that impartial treatment in the way of credit was required thereby.¹² The theory of the majority cases is to the effect that subject to the two leading prohibitions that charges shall not be unreasonable and that there shall not be unjust discrimination, the commerce act left common carriers as they were at common law,¹³ and that as the right to grant or withhold credit has not been specifically denied by the Act, it still exists. Such a construction gives to the statute in this respect a partial anesthetic, for in the field of discrimination the common

⁴ Laws of N. Y. 1909, c. 219, sec. 103.

⁵ *Adams Express Company v. Indiana*, 161 Ind. 328, 67 N.E. 1033 (1903); *Wadley Southern Railway Company v. Georgia*, 137 Ga. 497, 73 S.E. 741 (1912).

⁶ *Atchinson etc. R. Co. v. Bowman*, 158 Pac. 814 (Col. 1916); *Brown Coal Co., v. Grand Trunk Railway* 159 Mich. 565, 124 N.W. 528 (1910); *Russell v. Miller*, 98 Miss. 185, 53 South 495 (1910), *semble*; *Allen v. Cape Fear R. Co.*, 100 N.C. 397, 6 S.E. 105 (1888).

⁷ 24 Stat. L. 379, as amended.

⁸ *Baltimore and Ohio R. Co. v. Adams Express Co.*, 22 Fed. 32 (1884); *Oregon Ry. Co. v. Northern Pacific R. Co.*, 61 Fed. 158 (1894); *Little Rock etc. R. Co. v. St. Louis Ry. Co.*, 63 Fed. 775 (1894); *Gulf etc. R. Co. v. Miami S. S. Co.*, 86 Fed. 407 (1898).

⁹ *Gamble-Robinson Co. v. Chicago etc. R. Co.*, 168 Fed. 161 (1909).

¹⁰ *Baltimore and Ohio R. Co. v. Adams Express Co.*, 22 Fed. 404 (1884).

¹¹ 32 Stat. L. 847, as amended 34 Stat. L. 587, Sec. 2.

¹² *Hocking Valley Ry. Co. v. United States*, 210 Fed. 735 (1914), affirming 194 Fed. 234 (1911).

¹³ *Gamble-Robinson Co. v. Chicago etc. R. Co.*, *supra*.

law, at the time of the passage of the Act, had had a comparatively short time in which to work out any well recognized principle as to what constituted a "discrimination."¹⁴ The Supreme Court has yet to pass upon Section 3 in this connection. In the case of *Wadley Southern Railway Company v. Georgia*,¹⁵ a state statute was upheld prohibiting partiality in credit extension by a railroad.¹⁶ In the course of its opinion the court merely commented on the contrary opinions in the lower courts. In view of the authorities, therefore, the ruling of the Commission, if based solely upon Section 3, is questionable.

It is under Section 15 as noted above, however, that the ruling should find support. This provision giving to the Commission control over "unfair practices" first appeared in the 1906 amendment¹⁷ to the Interstate Commerce Act. It was continued in the subsequent amendment of 1910,¹⁸ which brought interstate telephone and telegraph companies under the prohibitions of the Act. Few decisions have been rendered interpreting the scope of the words "unfair practices,"¹⁹ although the Commission in a previous case considered the problem of credit extension and at that time forecast its present ruling.²⁰ Giving the term a meaning not merely co-extensive with practices amounting to a discrimination at the common law, but rather one in keeping with the press of present day problems, the Commission has found the action of the Western Union to be unfair and prejudicial to the business of the Postal Company. It is to be noted that the offending company is not required by the ruling to continue to grant credit to whomsoever applies for it. Nor is it required to transmit messages received from the complainant company at the latter's lower schedule of rates. The only requirement placed upon the Western Union is that if it does maintain a credit policy, it shall treat Trojan and Tyrian alike, with the proviso that it may exact security from those of questionable financial standing.

The ruling of the Commission is in keeping with the recognized trend of Congressional control and legislation in matters connected with interstate commerce. The entire mass of legislation on the subject from its inception in 1887 to the present time shows that the purpose of Congress was "to cut up by the roots every form of favoritism, discrimination or inequality".²¹ The

¹⁴ See 66 *Univ. of Pa. Law Review* 123, and 67 *Univ. of Pa. Law Review* 109 as to origin and scope of the rule as to discrimination by public servants at common law.

¹⁵ 235 U. S. 651 (1915).

¹⁶ *Wadley Southern Ry. Co. v. Georgia*, 137 Ga. 497, 73 S. E. 741 (1912).

¹⁷ 34 Stat. L. 584.

¹⁸ 36 Stat. L. 539.

¹⁹ The plenary powers of the Interstate Commerce Commission under this section were recognized in the case of *I. C. C. v. I. C. R. R. Company* 215 U. S. 452 (1910) and *Balto. and Ohio R. Co. v. Pitcairn Coal Co.*, 215 U. S. 481 (1910).

²⁰ *American Coal Co. v. Michigan Central R. Co.*, 36 I. C. C. 195 (1915).

²¹ *Louisville etc. R. Co. v. Mottley* 219 U. S. 467, 478 (1911).

interpretation given to the words "unfair practices" is in line with the policy of Congress as reflected in the establishing of a Federal Trade Commission with plenary powers over unfair competition, and that shown by the Transportation Act of 1920²² which in amending Section 3 of the Act of 1887 provides in specific terms that the Commerce Commission may prescribe rules as to the extension of credit by interstate carriers when an interchange of traffic takes place.²³

J. R. Jr.

SCOPE OF PENNSYLVANIA WORKMEN'S COMPENSATION ACT OF 1915.—A very important case determining the exclusiveness of the remedy under the Pennsylvania Workmen's Compensation Act of 1915¹ was decided recently by a Common Pleas Court,² wherein it was held that the act provided a complete system controlling recovery in case of industrial accident and that therefore anyone who might have maintained an action at law for such injuries or death is now bound by the remedies given by the Act.

It is well settled that in all cases where no agreement has been filed, whereby the parties refuse to accept the provisions of the Act,³ the employee's rights⁴ and those of his dependent relatives⁵ are confined to those given by the Act as they are clearly covered by its provisions. The only doubt arises in cases of parties who prior to the passage of this Act had a right of action for death of a relative resulting from negligence on the part of the employer and who are given no rights whatever under the Act. Thus, in the recent case referred to, the mother of a deceased minor sued in trespass to recover damages on account of the minor's death resulting from the negligence of the defendant Company in supplying the decedent with improper tools and insufficient instruction. The mother alleged non-dependency contending that the Act applied only to employees and their dependent relatives and that therefore she was not bound by its provisions and could sue in

²² Act. Feb. 28, 1920, Stat. 66th Cong., c. 91, Section 405 provides in part as follows: "No carrier by railroad subject to the provisions of this Act, shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment of all such rates and to prevent unjust discrimination."

²³ See *Ex Parte No. 73*, 59 I. C. C. 456 (1920) for the application of this provision to a concrete case.

¹ Act of June 2, 1915. Penna. P. L. 736.

² *O'Hara v. Standard Steel Works Co.* No. 95, C. P. Mifflin County, Aug. Term 1920. Decided Feb. 18, 1921. (Unreported).

³ Act of June 2, 1915 *supra* § 302.

⁴ *Anderson v. Carnegie Steel Co.* 255 Pa. 33 (1916). *Kaplan v. Honey etc.* 27 Dist. Rep. 535 (Pa. 1918). But where a minor is illegally employed and is injured while so working, he may bring an action of trespass. *Lincoln v. National Tube Co.* 112 Atl. 73 (Pa. 1920).

⁵ *Liberato v. Royer & Herr.* 28 Dist. Rep. 268 (Pa. 1919).